

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 13073 of 2005

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DATED: 25-10-2005

N.Mohan Mohan Reddy.

..... PETITIONER

AND

The Banking Ombudsman (AP) Reserve Bank of India
Annex Buidling, Ground Floor Saifabd, Hyderabad & two others.

.....RESPONDENTS

ORDER:

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Assailing the order, dated 07-04-2005, rejecting the complaint No.379/2004-05 under Clause 19(2) of the Banking Ombudsman Scheme, 2002, this Writ Petition has been filed.

2. The brief facts of the case giving rise to filing of this writ petition are as follows:-

The petitioner is a seed organizer to JK Seeds, Zuvari Seeds, Kaveri Seeds and Exotica Hi-tech Seeds, Hyderabad. He has an SB account No.50617 in Canara Bank, Main Branch, Warangal. He sent a cheque bearing No.015772 for Rs.4,54,911/-, dated

08-07-2004, drawn on Indian Overseas Bank, Nakkalagunta Branch, Hanumakonda through his clerk by name Vamshi for depositing to the credit of his SB account in Canara Bank for realization on

12-07-2004. The said Vamshi deposited the cheque to the credit of SB.A/c No.50617 in Canara Bank Main Branch, Warangal. Subsequently, the petitioner came to know that one N.R.Madan Mohan Reddy opened an SB account in the Indian Overseas Bank, Nakkalakunta Branch, Hanumakonda and realized the proceeds of the cheque in question. The petitioner therefore presented a complaint before the Banking Ombudsman for redressal. His complaint against the Canara Bank, Main Branch, Warangal and Indian Overseas Bank, Hanumakonda was taken

on file by the Banking Ombudsman. Both the parties entered appearance before the Banking Ombudsman and opposed the claim of the writ petitioner. The learned Ombudsman, on considering the material on record and on hearing the parties, found no merit in the complaint and accordingly rejected the same under Clause 19(2) of the Banking Ombudsman Scheme, 2002. The relevant portion of the order passed by the Banking Ombudsman reads as follows:-

"The complainant in his complaint as well as in the meeting insisted that the cheque was deposited with Canara Bank. On the contrary the bank denied it. If the cheque was in fact deposited with Canara Bank and later lost from its end, the liability of Canara Bank may arise. But no explanation was available as to how the cheque reached the fraudster if it is a fact that the cheque was deposited with Canara Bank. The complainant's insistence that he had deposited the disputed cheque with Canara Bank is also disputable since though the complainant had produced the counterfoil to prove that he had deposited the cheque with Canara Bank, it is noted that though the bank seal appears on the counterfoil, it is not signed by any bank official. In the absence of any such signature it cannot be concluded that Canara Bank on had received the instrument for collection. Regarding the seal appearing on the counterfoil, the bank took a stand that it might have been affixed by some unauthorized person using the rubber stamp available at the counter or the seal might have been impressed using a fake rubber stamp. These aspects require a thorough police investigation. It is learnt that police investigation is pending, which may bring out the true facts of the case.

I am therefore of the opinion that it would be premature to reach any conclusion as to the complicity of either Canara Bank or Indian Overseas Bank in the matter and the matter has to wait until investigations are over and the details become clear. Also, this office is not empowered to direct the police with regard to the investigation or call witnesses like the security guard or others who may have some information relating to the matter. The summary nature of the proceedings before this Forum cannot afford opportunity to the parties for examination/cross examination of witnesses and therefore the case is more appropriately and competently to be decided before a regular Court of Law. The complaint is therefore rejected under Clause 19(2) of the Banking Ombudsman Scheme, 2002 and the file is ordered for closure".

3. Heard the learned counsel for the petitioner and the learned standing counsel for the 2nd respondent.

4. Learned counsel for the petitioner submits that it is the practice of the petitioner to

deposit cheques to the credit of his account and none of the counterfoils contain the signatures of the bank employees and therefore mere not obtaining signature on the deposit voucher in question cannot be a ground to reject the complaint of the writ petitioner.

5. Learned standing counsel for the 2nd respondent submitted that to fix the responsibility on the respondents, it is for the complainant to prove that the cheque in question has been deposited to the credit of his account and since the voucher in question does not contain the signature of any of the bank officials, no credence can be given to it and the learned Banking Ombudsman/1st respondent is justified in rejecting the complaint.

6. When the petitioner proceeds to lodge complaint against the respondents on the specific assertion that the cheque in question has been deposited to the credit of his account, it is for him to prove that the cheque has been deposited so to the credit of his account. The credit voucher placed on record does not contain the signature of any of the bank officials and therefore, the learned Ombudsman is justified in rejecting the complaint of the writ petitioner. Therefore, the Writ Petition is devoid of merits.

7. Accordingly, the writ petition is dismissed. No order as to costs.

(B.SESHASAYANA REDDY,J)

25th October, 2005.

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